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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

COMMISSIONER OF IMMIGRATION OF PORT New York, petitioner, v. GITTEL GOTTLIEB AND ISRAEL GOTTLIEB. } No. 221.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONER.

STATEMENT.

This case comes before the court upon a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, to review a judgment of that court affirming a judgment of the District Court for the Southern District of New York, which sustained a writ of habeas corpus and directed the discharge from custody of certain aliens applying for admission to the United States.

The aliens, Gittel Gottlieb, age 24, and Israel Gottlieb, age 4, who are natives of Palestine, arrived at the port of New York on December 27, 1921.

(R. 13.) They had come to join Solomon Gottlieb, their husband and father, respectively, who had resided in New York City for approximately fourteen months prior thereto, was engaged as Rabbi of a Jewish congregation, and had declared his intention to become a citizen of the United States. (R. 17–18.)

On December 30, 1921, the aliens were duly accorded a hearing before a Board of Special Inquiry (R. 14–19), which, after hearing the testimony, excluded them upon the ground that they had come to the United States in violation of the "Quota Law" of May 19, 1921, 42 Stat. 5, c. 8, in that they were natives of a country whose quota had been filled (R. 18–19).

An appeal was taken to the Secretary of Labor, who, on January 18, 1922, affirmed the decision of the Board and directed the deportation of the aliens. (R. 19.) A petition for a writ of habeas corpus was immediately presented to the United States District Court for the Southern District of New York, and the writ awarded. (R. 1–8.) Return was made (R. 9–19), and subsequently the relators filed a traverse (R. 20–24) and a supplemental traverse (R. 25–37). The case came on for hearing before Hon. Julian W. Mack, United States Circuit Judge, who sustained the writ and entered an order (March 13, 1922) releasing and discharging the relators from the custody of the immigration officers, and directing that they be admitted to the United States. (R. 38–43.) (278 Fed. 564.)

Thereafter, on May 13, 1922, an appeal was taken by the Commissioner of Immigration of the Port of New York to the Circuit Court of Appeals for the Second Circuit (R. 46–51), which court on November 24, 1922, affirmed the decree and order of the District Court (R. 53–59). (285 Fed. 295.)

Thereafter, on March 24, 1923, upon petition duly presented to this court, a writ of certiorari was granted to review the judgment of the Circuit Court of Appeals. (R. 59–60.) The single question involved is one of construction, and arises out of the pleadings filed in the District Court.

STATEMENT OF THE QUESTION INVOLVED.

The second assignment of error filed in the Circuit Court of Appeals (R. 44–45) was as follows:

> Second. That said Court erred in holding that the Act of May 19, 1921, properly construed, should include within the exceptions from the quota provisions, the wife, and children under sixteen years of age, of a minister.

The failure of the Circuit Court of Appeals to sustain this assignment raises the only question to be considered by this court.

This appeal presents a case of hardship that naturally excites our sympathy. We would gladly resolve the doubt in favor of the immigrants, if any doubt existed. We must not permit a hard case to make bad law by a perversion of the laws of Congress. We would gladly concur in the opinion of the courts

below, if the law were not, as we believe, too clear, and the consequences of the decision too serious in the practical administration of the immigration statutes to permit us to acquiesce. While legislative policy is not for the Executive Department of the Government, we venture the opinion that there should be such elasticity in the practical administration of the law as would permit the Commissioner of Immigration to make an exception in isolated cases, where the enforcement of the law requires the separation of a family, a result which seems to us abhorent.

ARGUMENT.

I.

The acts of Congress involved.

This appeal raises a novel and important question of construction under the "Quota Law" of May 19, 1921, c. 8, 42 Stat. 5, as amended by Public Resolution No. 55, approved May 11, 1922, c. 187, 42 Stat. 540.

Section 2 (d) of this Act contains a proviso which excepts out of its provisions ministers of religion, without specifically mentioning their wives, and children under sixteen years. The Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, contains in its third section a proviso which excepts from certain of its provisions ministers of religion, and specifically extends the exception "to their legal wives or their children under sixteen years of age, who shall accompany them, or who subsequently may apply for admission to the United States." (39 Stat. 877.)

The District Court and the Circuit Court of Appeals held that the Acts of 1917 and 1921 were in *pari materia,* that the specific exception contained in Section 3 of the earlier act was indicative of an intention, and declaratory of a policy, of Congress to admit generally the wives and children of admissible, aliens, and that in order to carry out the legislative intent and purpose it is necessary to read into the Act of 1921 a like exception.

We believe, and we shall endeavor to demonstrate hereafter, that the Act of 1917 in no way affects the Act of 1921, and is in no way involved in the instant case. However, as the reasoning of the courts below starts with it as a premise, and involves, as we believe, an erroneous construction of both acts, it is necessary to examine in some detail the pertinent provisions of both acts *in limine.* For the convenience of the court Section 3 of the Act of 1917 and the entire Act of 1921 are printed as an appendix to this brief.

Act of 1917.

The Act of February 5, 1917, c. 29, 39 Stat. 874, is a comprehensive enactment "To regulate the immigration of aliens to, and residence of aliens in, the United States." It repealed and replaced a number of earlier acts, and was obviously designed to furnish a basic act covering the entire field not already occupied by existing treaties and the laws relating to exclusion of Chinese. (See Section 38.)

Section 3 defines the classes of aliens who are to be excluded. After enumerating idiots, imbeciles, feeble-

minded persons, epileptics, insane persons, paupers, professional beggars, persons afflicted with contagious diseases, criminals, polygamists, anarchists, prostitutes, contract laborers, and others considered undesirable, there is a description by parallels of latitude and meridians of longitude, of a geographical zone which includes a large part of Asia and the South Sea Islands. This zone is commonly referred to as the "Asiatic barred zone." With respect to this zone it is provided that "unless otherwise provided for by existing treaties, persons who are natives of * * *" this zone, shall be excluded. And in order that this clause should not be construed so as to set aside any of the Chinese exclusion acts, it is said "and no alien *now* in any way excluded from, or prevented from entering, the United States shall be admitted to the United States." [Italics ours.] Immediately following these provisions relating to the "Asiatic barred zone" is this proviso, upon which the courts below so strongly relied in their opinions:

> The provision next foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occu-

> pation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in Section nineteen of this Act.

This was construed by the Circuit Court of Appeals as a general exception applicable to the entire section. It is obvious, however, that this proviso relates solely to the "Asiatic barred zone." The language is clear. It does not say "this *section*, however, shall not apply to persons of the following status or occupations." It says "*the provision next foregoing*, however, shall not apply, etc." The rule stated in *United States* v. *Bernays*, 158 Fed. 792, is applicable:

> A proviso should be construed with reference to the subject matter of the sentence of which it forms a part, unless it clearly appears to be designed by the legislature for a broader or more independent operation.

Here the grammatical construction requires that it be limited to the "provision next foregoing."

Furthermore, if it be construed as a general exception out of all the classes enumerated in the section, it would operate to admit to this country travelers for curiosity, artists, or students, notwithstanding the fact that they might also be anarchists, polygamists, criminals, or epileptics. The language requires no such construction and certainly such an intention is not to be imputed to Congress.

We think it clear, therefore, that the above-quoted proviso must be construed so as to relate only to the "Asiatic barred zone."

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Act of 1921.

We come now to the Quota Law of 1921 (May 19, 1921, c. 8, 42 Stat. 5, as amended by Public Resolution of May 11, 1922, c. 187, 42 Stat. 540). As its title indicates, this is an act to *limit* rather than to *regulate* the immigration of aliens. It provides in Section 2 (a):

> That the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910.

Then follows an enumeration of certain classes which "shall not be counted in reckoning any of the percentage limits provided in this Act." These classes are entirely removed from the operation of the law. Among them are "(6) aliens from the so-called Asiatic barred zone, as described in Section 3 of the Immigration Act."

In a later paragraph of the same section (paragraph (d)) it is provided that, "when the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted, all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year, shall be excluded."

These provisions disclose the wide difference in purpose and character between this Act and that of

1917. Both relate to the same subject—immigration. They are in *pari materia;* they must be read and construed together, but each has its separate and distinct purpose. The provisions of the later act do not repeal or set aside those of the earlier one, nor does the earlier modify the clear language or alter the manifest purpose of the later.

The Immigration Law (1917) defines and excludes undesirable aliens because they are undesirable, but it leaves our ports open to all others without regard to their number. The Quota Law (1921), as a supplement to it, limits the number of aliens of each nationality, and when this "quota" has been admitted it excludes *all others.* The Immigration Law *regulates* immigration by a process of selection. The Quota Law *limits* it. The former is like a great net cast across the stream of foreign immigration to catch and exclude all the scum and rubbish which may be borne upon its waters, while the latter is like a floodgate which shuts off the stream entirely when a certain measured quantity of water has passed.

A further difference between these enactments should be noted. Exclusion under the Act of 1917 is permanent, unless the disqualification be removed, which in most cases is impossible; while exclusion under the Act of 1921 is merely temporary. The Act, in its present form, is limited to expire on June 30, 1924, after which all aliens otherwise admissible may enter. Meanwhile anyone who has been so unfortunate as to arrive after the quota is filled need only wait until the next fiscal year, when, by applying in

the early part of that year, he may make sure of admission.

Section 4 of the Act of 1921 provides:

> That the provisions of this Act are in addition to, and not in substitution for, the provisions of the Immigration laws.

Had there been no specific provision this would have been obvious from the general character and purpose of the two acts. There is no conflict or inconsistency between them. And certainly no question arises such as is suggested in the opinion of the Circuit Court of Appeals (R. 55) as to the repeal of any of the provisions of the earlier act by those of the later.

We come now to a consideration of the exception of ministers from the Quota Law. It is contained in Section 2 (d) and is as follows:

> *Provided further*, That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, *ministers of any religious denomination*, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality, admissible in the same month or fiscal year, as the case may be, shall have entered the United States; but aliens of the classes included in this proviso who enter the United States before such a maximum number shall have entered shall (unless ex-

> cluded by subdivision (a) from being counted) be counted in reckoning the percentage limits provided in this Act. (*Italics ours*).

Thus, ministers are excepted, but the Act makes no exception of their wives or children. It is this proviso into which the courts below have read an exception allowing the wives and children of ministers to enter.

We shall have occasion hereafter to consider this portion of the statute more carefully. We now call attention only to the fact that the individuals enumerated in it are not excepted entirely out of the provisions of the Act, as are those mentioned in Section 2 (a). If they arrive before the quota is filled, they shall be counted. The exception does not seem, therefore, to have been inserted because these persons were considered particularly desirable, but merely to avoid undue inconvenience to persons pursuing certain particular occupations, whose contracts or engagements might occasion their entry at a time when the quota was exhausted. The same reason which prompted their exception would not extend to their wives or children.

II.

The opinion of the Circuit Court of Appeals.

In the light of this preliminary view of the statutory provisions let us examine the decision of the court below. The reasoning of the Circuit Court of

Appeals in support of its conclusion is summarized in the following portion of the opinion (R. 58):

> Keeping in mind the above rules of interpretation, we construe the Acts of 1917 and 1921 as one statute, the second act being, as provided therein, an addition to and not a substitution for, the first act. The effect of the second act is to add to the classes excluded under the original act an additional class to those previously excluded, but it does not deprive those to whom a right of entry was expressly given in the first act of the right so granted. Neither the letter nor the spirit of the second act calls for a construction imputing to Congress the intention to create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family. An interpretation which would exclude the wife and children would be based on a consideration of the second act taken alone. But it can not be construed alone, but must be interpreted upon a general survey of both acts in all their parts. And when so interpreted, we think the right of entry given in the first act to the wife and children of a minister has not been withdrawn because of anything to be found in the second act. If Congress intended to admit the minister but to exclude his wife and children, it has failed to indicate it by any clear and sufficiently definite specific provision which justifies us in holding that the right expressly granted in the unrepealed Act of 1917 has been withdrawn.

Thus, the court declares that an exception which is not contained in the Act of 1921 must be read into it, (1) because the relators had a right of entry into the United States under the former act; (2) because the supposed legislative intent and policy declared by Congress in the former act, to avoid the separation of families, requires such construction; and (3) because the construction adopted by the immigration officers would lead to results which are unjust, unreasonable, and absurd.

We think that each of these reasons is demonstrably unsound, and in reply we submit that—

1. The exception of wives and children out of a particular class of aliens excluded by the Act of 1917 does not give them a right of entry superior to that of any other admissible alien.

2. The immigration laws of Congress disclose no general policy to except from their provisions wives and children.

3. The language of the Act of 1921 is clear and should be enforced as Congress intended.

III.

The exception of wives and children out of a particular class of aliens excluded by the Act of 1917 does not give them a right of entry superior to that of any other admissible alien.

We have already pointed out that the exception of wives and children, which is contained in Section 3 of the Act of 1917, relates only to the Asiatic barred zone, and that aliens from that zone are removed

entirely from the provisions of the Quota Law by Section 2 (a), (6) thereof. We might further observe that the relators in the instant case do not come from that zone, and accordingly can not hope to derive a benefit from that exception.

If, however, we join the Circuit Court of Appeals in hurdling these obstacles, we come to the rather curious position which that court took concerning the rights of wives and children. At several places the court refers in its opinion (R. 58) to "those to whom a right of entry was expressly given" in the Act of 1917. The theory is that because wives and children of certain aliens were excepted out of the excluded class mentioned in the Act of 1917, they thereby acquired some vested right to enter the United States, which could not thereafter be taken from them excepting by some express and unequivocal declaration by Congress. That there is no such right of entry seems clear.

The Act of 1917 is an exclusion act. It defines those classes of persons who shall not enter. Because of the generality of the terms used in describing the excluded classes, it became necessary to except certain persons out of those who otherwise would be excluded. Manifestly such excepted persons are on a parity with that very large class of admissible aliens who did not fall within the excluded classes. An alien who may be admissible because he comes within the exception surely has no greater claim upon our national hospitality than one who never came

within the excluded classes. None of them have a "right of entry." They are merely persons *not excluded*. And when the provisions of the Quota Law are applied, as they must be, to all of these admissible aliens, there is no reason why one of them rather than another should be admitted in violation of the plain letter of that enactment.

IV.

The immigration laws of Congress disclose no general policy to except from their provisions wives and children.

The Circuit Court of Appeals was of the opinion that Congress had adopted a general policy of admitting the wives and children of admissible aliens in order to preserve the unity of the family and avoid the hardship consequent upon a separation of its members. We have examined carefully the various immigration acts and we find no such settled policy. There are specific instances (see Secs. 3 and 22 of Act of Feb. 5, 1917, c. 29, 39 Stat. 874, and Sec. 2 (d) of Act of May 19, 1921, c. 8, 42 Stat. 5) in which they are specially mentioned. These serve, however, only to negative the idea of a general policy embracing all cases.

The court below was aided in its search for such a benevolent policy by a contemplation of the hardships which might otherwise be visited upon women and children by the operation of our laws. We submit, however, that it is fundamentally erroneous to speak

of our immigration statutes as requiring in any case the separation of members of the same family. The idea is based upon the assumption that some one or more members of the family are obliged to enter the country. Of course, this is not the fact. The law imposes no obligation upon any alien to enter. If he arrive at a port of the United States with his family, and it be found that one or more members of his family are not admissible under our laws, he is not obliged to remain. Any separation of his family which may result in such circumstances follows from his own act and not from the operation of our laws. The same is true of the alien who, as in the instant case, separates himself from his family first, establishes a residence here, and then sends for his family. We would not for a moment discount the misfortune which is occasioned by such circumstances, but we do submit that it is not a misfortune of our making, nor is it one which Congress was under any obligation to avoid or has adopted any general policy to prevent.

There are undoubtedly many cases where fathers, or mothers, or brothers, or sisters, or children may be entitled to admission under the Act of 1917, but other members of the family would not be because of physical or mental defects, criminal tendencies, or political theories. *Zartarian* v. *Billings*, 204 U. S. 170. There is no policy to be found in that Act, or in any other which has come to our notice, which requires the admission of an entire family because the head of the family is admissible.

The humanitarian considerations here relied upon have been urged in other cases, but this court, however desirous it may have been to avoid it, has not hesitated to construe the immigration statutes so as to exclude the wives or children of admissible aliens when it reached the conclusion that the plain terms of the statute required such construction.

Zartarian v. *Billings*, 204 U. S. 170.
Low Wah Suey v. *Backus*, 225 U. S. 460.
Yee Won v. *White*, 256 U. S. 399.

V.

The language of the Act of 1921 is clear and should be enforced as Congress intended.

The first sentence of Section 2 (d) of the Act of 1921 (42 Stat. 5) is clear:

> When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded.

Together with the quota provision (Sec. 2 (a)), it fixes a definite and certain limit to the number of aliens who may be admitted in any fiscal year. This is in accord with the manifest purpose of the Act, which was to stem the rising tide of European immigration by fixing a numerical limit which should not be exceeded under any circumstances, unless the

applicant for admission could bring himself clearly within the exceptions.

In support of its construction the Circuit Court of Appeals relies upon the familiar case of *Holy Trinity Church* v. *United States*, 143 U. S. 457. But the distinction between that and the instant case is clear. There the court had before it a statute which forbade the entry of aliens "under contract or agreement to perform labor" in the United States. From an examination of the evils which Congress sought by that act to remedy, this court found that the contract of a minister of religion to render services to a church congregation was not within the spirit or purpose of the act; and, construing the letter of the law to conform to its purpose, it held that the broad language of the act might be cut down so as to embrace only those cases which fell within that purpose.

In the instant case we have a statute whose purpose is to limit the number of aliens entering the country. The admission of any alien, not clearly entitled to enter, tends to defeat this purpose.

Where the letter of the law extends beyond its spirit and purpose, it may be construed so as to embrace only cases within the purpose. But where the letter coincides with the purpose it is not open to any construction which will defeat that purpose.

The case of *United States* v. *Mrs. Gue Lim*, 176 U. S. 459, is also relied upon. A careful reading of that opinion and of the Chinese treaty of 1880, however, will disclose that it has no application to this case. That decision was twice urged upon this court to

support contentions similar to those made here, but in each case the court pointed out clearly the distinction. *Yee Won* v. *White*, 256 U. S. 399; *Low Wah Suey* v. *Backus*, 225 U. S. 460.

But there is a further reason why the language which excepts ministers only should not be extended to embrace their wives and children. The Act bears upon its face clear indications of the fact that Congress carefully considered the generality of the language employed and made such exceptions therefrom as it deemed proper. Section 2 (a) contains eight separate exemptions, each of which is carefully and accurately phrased. The first sentence of Section 2 (d) contains, out of an abundance of caution, the words "except as otherwise provided in this act." Thereafter follow certain other exceptions, and the conclusion of that paragraph contains the following proviso (42 Stat. 6):

> *Provided further*, That in the enforcement of this Act preference shall be given so far as possible to the wives, parents, brothers, sisters, children under eighteen years of age, and fiancees, * * * (2) of aliens now in the United States who have applied for citizenship in the manner provided by law * * *.

This fits precisely the case of the relators. It indicates that Congress specially considered such wives and children and made such provision for them as in its judgment was proper. Surely in the light of this proviso there is no room for the argument that Con-

gress intended that these relators should be excepted entirely out of the provisions of the law.

> Where the Congress makes no exception from the clear and certain declaration of a statute, there is ordinarily a presumption that it intended to make none. (*McIver* v. *Ragan*, 2 Wheat. 25, 29; *Bank* v. *Dalton*, 9 How. 522, 528; *Vance* v. *Vance*, 108 U. S. 514, 521; *Railway Co.* v. *B'Shears*, 59 Ark. 237, 244.) By so much the more it is true that where the law making body has made exceptions to the general terms of an act, as in this instance, the presumption is that it intended to make no more. (*United States* v. *Colorado & N. W. R. Co.*, 157 Fed. 321, 332.)

In *Lapina* v. *Williams*, 232 U. S. 78, 92, it is said:

> The Section contains its own specific provisos and limitations, and these, on familiar principles, strongly tend to negative any other and implied exception.

And this is particularly true in the case at bar, where, as we have already observed, there is a good reason why actors, professors, musicians, ministers, etc., should be excepted from this temporary exclusion, and the same reason does not extend to their wives and children.

Finally, it is urged that the letter of the law is harsh and unreasonable, and its enforcement will lead to unjust and absurd results. If the exclusion of those who arrive after a quota is filled were a permanent bar to their entry, there would be considerable force to this argument. But it is not. The enforce-

ment of the Act results merely in delay and inconvenience. We may well say with this court in *St. Louis and Iron Mountain Ry.* v. *Taylor*, 210 U. S. 281, 295:

> This argument is a dangerous one, and never should be heeded when the hardship would be occasional and exceptional. It would be better, it was once said by Lord Eldon, to look hardship in the face rather than break down the rules of law.

The courts are not at liberty to substitute for the will of the legislature their own ideas of the justice, policy, or expediency of the law.

> No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute. (*United States* v. *Goldenberg*, 168 U. S. 95, 103.)
>
> The purpose of the law is the ever-insistent consideration in its interpretation. (*United States* v. *Antikamnia Company*, 231 U. S. 654, 667.)

To the same effect are *United States* v. *First National Bank*, 234 U. S. 245; *American R. R. Co.* v. *Birch*, 224 U. S. 547; and many other cases.

But whatever may be the results of the enforcement of the letter of the law, the consequences of the construction adopted by the Circuit Court of Appeals are still more unreasonable and absurd, for they would make of the Quota Law a mere scrap of paper. Let us follow them.

If the exception be extended to include the wives and children of ministers of religion, it must, by the same reasoning, be extended to the husbands, wives, and children of actors, artists, lecturers, singers, nurses, professors, and domestic servants, for all of these are included in the language of the act and are on a parity with ministers. But it would not stop here. The wives and children of all aliens admitted before the Quota Law became effective, and who returned for a temporary visit abroad, would have to be admitted. In fact, this same Circuit Court of Appeals has decided in a later case that this conclusion must logically follow from the decision here. In *United States ex rel. Markarian* v. *Tod*, 290 Fed. 198, it was held that an Armenian who came to this country in 1913, declared his intention of becoming a citizen and returned in 1921 for the purpose of being married might bring back with him his Turkish wife, notwithstanding the fact that the quota of her nationals had been filled. The court said (p. 199):

> The same reasoning which in the Gottlieb case permitted the entrance of the extra quota wives of ministers gives admission to the extra quota wives of aliens returning from a temporary visit abroad.

But it would not stop even at this absurd length. The reasoning of the Circuit Court of Appeals would require the admission of the wives and children of all aliens who had entered before the Quota Law was enacted as well as *of all those who enter under the*

Quota Law. It is easy to see how a quota which is limited by the Act to 3 per cent might be doubled, tripled, quadrupled, or even further enlarged under such a construction. If the heads of families do but come first and fill the quota, and thereafter send for their wives and children, we shall have to admit not 3 per cent but 10, 15, or 20 per cent. Thus, the construction adopted by the court below would utterly defeat the purpose of Congress and convert the Quota Law from an act to limit immigration to so much legislative nonsense.

CONCLUSION.

This brief has extended to somewhat greater length than would ordinarily be justified in the discussion of a case of this character. The unfortunate circumstances of the relators, however, compel our interest and warrant a thorough and careful examination of the question. And, on the other hand, the consequences which must logically follow from the reasoning of the court below would be fatal to the purpose of the Quota Law.

It seems to us abundantly clear (1) that the Immigration Act of 1917 does not in any way limit or modify the terms of the Quota Law of 1921; (2) that wives and children of ministers did not acquire, by virtue of the proviso in the former act, any right of entry into the United States superior to that of any other admissible alien; (3) that while Congress has frequently extended special provisions in favor of wives, children, and other relatives, it

has never adopted any settled policy to admit them, nor has it provided for their admission when to do so would defeat the purpose of the statutes; and (4) that there is no possible construction of the Quota Law which will admit the relators without at the same time defeating the clear purpose of the Act and rendering its provisions worthless and ineffective as a check to the increasing flood of foreign immigration. We reluctantly reach the conclusion that the decision of the Circuit Court of Appeals was in error and should be reversed.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

GEORGE ROSS HULL,
Special Assistant to the Attorney General.

NOVEMBER, 1923.

APPENDIX.

Section 3 of the Immigration Act.

[Act of February 7, 1917, c. 29, 39 Stat. 874, entitled "An Act To regulate the immigration of aliens to, and residence of aliens in, the United States."]

SEC. 3. That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons; persons who have had one or more attacks of insanity at any time previously; persons of constitutional psychopathic inferiority; persons with chronic alcoholism; paupers; professional beggars; vagrants; persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who practice polygamy or believe in or advocate the practice of polygamy; anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all forms of law, or who disbelieve in or are opposed to organized government, or who advocate the assassination of public officials, or who advocate or teach the

unlawful destruction of property; persons who are members of or affiliated with any organization entertaining and teaching disbelief in or opposition to organized government, or who advocate or teach the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who advocate or teach the unlawful destruction of property; prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who directly or indirectly procure or attempt to procure or import prostitutes or persons for the purpose of prostitution or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons hereinafter called contract laborers, who have been induced, assisted, encouraged, or solicited to migrate to this country by offers or promises of employment, whether such offers or promises are true or false, or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled; persons who have come in consequence of advertisements for laborers printed, published, or distributed in a foreign country; persons likely to become a public charge; persons who have been deported under any of the provisions of this act, and who may again seek admission within one year from the date of such deportation, unless prior to their reembarkation at a foreign port or their attempt to be admitted from foreign contiguous territory the Secretary of Labor shall have consented to their reapplying for

admission; persons whose tickets or passage is paid for with the money of another, or who are assisted by others to come, unless it is affirmatively and satisfactorily shown that such persons do not belong to one of the foregoing excluded classes; persons whose ticket or passage is paid for by any corporation, association, society, municipality, or foreign Government, either directly or indirectly; stowaways, except that any such stowaway, if otherwise admissible, may be admitted in the discretion of the Secretary of Labor; all children under sixteen years of age, unaccompanied by or not coming to one or both of their parents, except that any such children may, in the discretion of the Secretary of Labor, be admitted if in his opinion they are not likely to become a public charge and are otherwise eligible; unless otherwise provided for by existing treaties, persons who are natives of islands not possessed by the United States adjacent to the continent of Asia, situate south of the twentieth parallel latitude north, west of the one hundred and sixtieth meridian of longitude east from Greenwich, and north of the tenth parallel of latitude south, or who are natives of any country, province, or dependency situate on the continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States. The provision next

foregoing, however, shall not apply to persons of the following status or occupations: Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, artists, merchants, and travelers for curiosity or pleasure, nor to their legal wives or their children under sixteen years of age who shall accompany them or who subsequently may apply for admission to the United States, but such persons or their legal wives or foreign-born children who fail to maintain in the United States a status or occupation placing them within the excepted classes shall be deemed to be in the United States contrary to law, and shall be subject to deportation as provided in section nineteen of this act.

That after three months from the passage of this act, in addition to the aliens who are by law now excluded from admission into the United States, the following persons shall also be excluded from admission thereto, to wit:

All aliens over sixteen years of age, physically capable of reading, who can not read the English language, or some other language or dialect, including Hebrew or Yiddish: *Provided*, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over fifty-five years of age, his wife, his mother, his grandmother, or his unmarried or widowed daughter, otherwise admissible, whether such relative can read or not; and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary

of Labor, each containing not less than thirty nor more than forty words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect. That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith; all aliens who have been lawfully admitted to the United States and who have resided therein continuously for five years, and who return to the United States within six months from the date of their departure therefrom; all aliens in transit through the United States; all aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory: *Provided*, That nothing in this act shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political: *Provided further*, That the provisions of this act, relating to the payments for tickets or passage by any corporation, association, society, municipality, or foreign Government shall not apply to the tickets or passage

of aliens in immediate and continuous transit through the United States to foreign contiguous territory: *Provided further*, That skilled labor, if otherwise admissible, may be imported if labor of like kind unemployed can not be found in this country, and the question of the necessity of importing such skilled labor in any particular instance may be determined by the Secretary of Labor upon the application of any person interested, such application to be made before such importation, and such determination by the Secretary of Labor to be reached after a full hearing and an investigation into the facts of the case: *Provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed as domestic servants: *Provided further*, That whenever the President shall be satisfied that passports issued by any foreign Government to its citizens or subjects to go to any country other than the United States, or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holder to come to the continental territory of the United States to the detriment of labor conditions therein, the President shall refuse to permit such citizens or subjects of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possession or from the Canal Zone: *Provided further*, That aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive

years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe: *Provided further*, That nothing in the contract-labor or reading-test provisions of this act shall be construed to prevent, hinder, or restrict any alien exhibitor, or holder of concession or privilege for any fair or exposition authorized by act of Congress, from bringing into the United States, under contract, such otherwise admissible alien mechanics, artisans, agents, or other employees, natives of his country as may be necessary for installing or conducting his exhibit or for preparing for installing or conducting any business authorized or permitted under any concession or privilege which may have been or may be granted by any such fair or exposition in connection therewith, under such rules and regulations as the Commissioner General of Immigration, with the approval of the Secretary of Labor, may prescribe both as to the admission and return of such persons: *Provided further*, That the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall issue rules and prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission: *Provided further*, That nothing in this act shall be construed to apply to accredited officials of foreign Governments, nor to their suites, families, or guests.

THE QUOTA LAW.

[Act of May 19, 1921, c. 8, 42 Stat. 5, as amended May 11, 1922, c. 187, 42 Stat. 540, entitled "An Act to limit the immigration of aliens into the United States."]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the operation of the Act entitled "An Act to limit the immigration of aliens into the United States," approved May 19, 1921, is extended to and including June 30, 1924.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act—

The term "United States" means the United States, and any waters, territory, or other place subject to the jurisdiction thereof except the Canal Zone and the Philippine Islands; but if any alien leaves the Canal Zone or any insular possession of the United States and attempts to enter any other place under the jurisdiction of the United States nothing contained in this Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens.

The word "alien" includes any person not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United States not taxed nor citizens of the Islands under the jurisdiction of the United States.

The term "Immigration Act" means the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States"; and the term "immigration laws" includes such Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, or expulsion of aliens.

SEC. 2. (a) That the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910. This provision shall not apply to the following, and they shall not be counted in reckoning any of the percentage limits provided in this Act: (1) Government officials, their families, attendants, servants, and employees; (2) aliens in continuous transit through the United States; (3) aliens lawfully admitted to the United States who later go in transit from one part of the United States to another through foreign contiguous territory; (4) aliens visiting the United States as tourists or temporarily for business or pleasure; (5) aliens from countries immigration from which is regulated in accordance with treaties or agreements relating solely to immigration; (6) aliens from the so-called Asiatic barred zone, as described in section 3 of the Immigration Act; (7) aliens who have resided continuously for at least five years immediately preceding the time of their application for admission to the United States in the Dominion of Canada, Newfoundland, the Republic of Cuba, the Republic of Mexico, countries of Central and South America, or adjacent islands; or (8) aliens

under the age of eighteen who are children of citizens of the United States.

(b) For the purposes of this Act nationality shall be determined by country of birth, treating as separate countries the colonies or dependencies for which separate enumeration was made in the United States census of 1910.

(c) The Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, shall, as soon as feasible after the enactment of this Act, prepare a statement showing the number of persons of the various nationalities resident in the United States as determined by the United States census of 1910, which statement shall be the population basis for the purposes of this Act. In case of changes in political boundaries in foreign countries occurring subsequent to 1910 and resulting (1) in the creation of new countries, the Governments of which are recognized by the United States, or (2) in the transfer of territory from one country to another, such transfer being recognized by the United States, such officials, jointly, shall estimate the number of persons resident in the United States in 1910 who were born within the area included in such new countries or in such territory so transferred, and revise the population basis as to each country involved in such change of political boundary. For the purpose of such revision and for the purposes of this Act generally aliens born in the area included in any such new country shall be considered as having been born in such country, and aliens born in any territory so transferred shall be considered as having been born in the country to which such territory was transferred.

(d) When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded: *Provided*, That the number of aliens of any nationality who may be admitted in any month shall not exceed 20 per centum of the total number of aliens of such nationality who are admissible in that fiscal year: *Provided further*, That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, ministers of any religious denomination, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same month or fiscal year, as the case may be, shall have entered the United States; but aliens of the classes included in this provisio who enter the United States before such maximum number shall have entered shall (unless excluded by subdivision (a) from being counted) be counted in reckoning the percentage limits provided in this Act: *Provided further*, That in the enforcement of this Act preference shall be given, so far as possible, to the wives, parents, brothers, sisters, children under eighteen years of age, and fiancées (1) of citizens of the United States, (2) of aliens now in the United States who have applied for citizenship in the manner provided by law, or (3) of persons eligible to United States citizenship who served in the military or naval forces of the United States at any time between April 6, 1917, and November 11, 1918, both dates

inclusive, and have been separated from such forces under honorable conditions.

SEC. 3. That the Commissioner General of Immigration, with the approval of the Secretary of Labor, shall, as soon as feasible after the enactment of this Act, and from time to time thereafter, prescribe rules and regulations necessary to carry the provisions of this Act into effect. He shall, as soon as feasible after the enactment of this Act, publish a statement showing the number of aliens of the various nationalities who may be admitted to the United States between the date this Act becomes effective and the end of the current fiscal year, and on June 30 thereafter he shall publish a statement showing the number of aliens of the various nationalities who may be admitted during the ensuing fiscal year. He shall also publish monthly statements during the time this Act remains in force showing the number of aliens of each nationality already admitted during the then current fiscal year and the number who may be admitted under the provisions of this Act during the remainder of such year, but when 75 per centum of the maximum number of any nationality admissible during the fiscal year shall have been admitted such statements shall be issued weekly thereafter. All statements shall be made available for general publication and shall be mailed to all transportation companies bringing aliens to the United States who shall request the same and shall file with the Department of Labor the address to which such statements shall be sent. The Secretary of Labor shall also submit such statements to the Secretary of State, who shall transmit the information contained therein to the proper diplomatic and consular officials of the United States, which officials shall make the same

available to persons intending to emigrate to the United States and to others who may apply.

SEC. 4. That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws.

SEC. 5. That this Act shall take effect and be enforced fifteen days after its enactment (except sections 1 and 3 and subdivisions (b) and (c) of section 2, which shall take effect immediately upon the enactment of this Act) and shall continue in force until June 30, 1922, and the number of aliens of any nationality who may be admitted during the remaining period of the current fiscal year, from the date when this Act becomes effective to June 30, shall be limited in proportion to the number admissible during the fiscal year 1922.

SEC. 6. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel, to bring to the United States either from a foreign country or any insular possession of the United States any alien not admissible under the terms of this Act or regulations made thereunder, and if it appears to the satisfaction of the Secretary of Labor that any alien has been so brought, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $200 for each alien so brought, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs

to the alien on whose account assessed. No vessel shall be granted clearance papers pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine. Such fine shall not be remitted or refunded unless it appears to the satisfaction of the Secretary of Labor that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such person or the owner, master, agent, or consignee of the vessel, prior to the departure of the vessel from the last seaport in a foreign country or insular possession of the United States.

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IN THE

Supreme Court of the United States

No. 221

October Term, 1923.

COMMISSIONER OF IMMIGRATION OF THE PORT OF NEW YORK,

Petitioner,

vs.

GITTEL GOTTLIEB and ISRAEL GOTTLIEB,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

BRIEF ON BEHALF OF THE RESPONDENTS.

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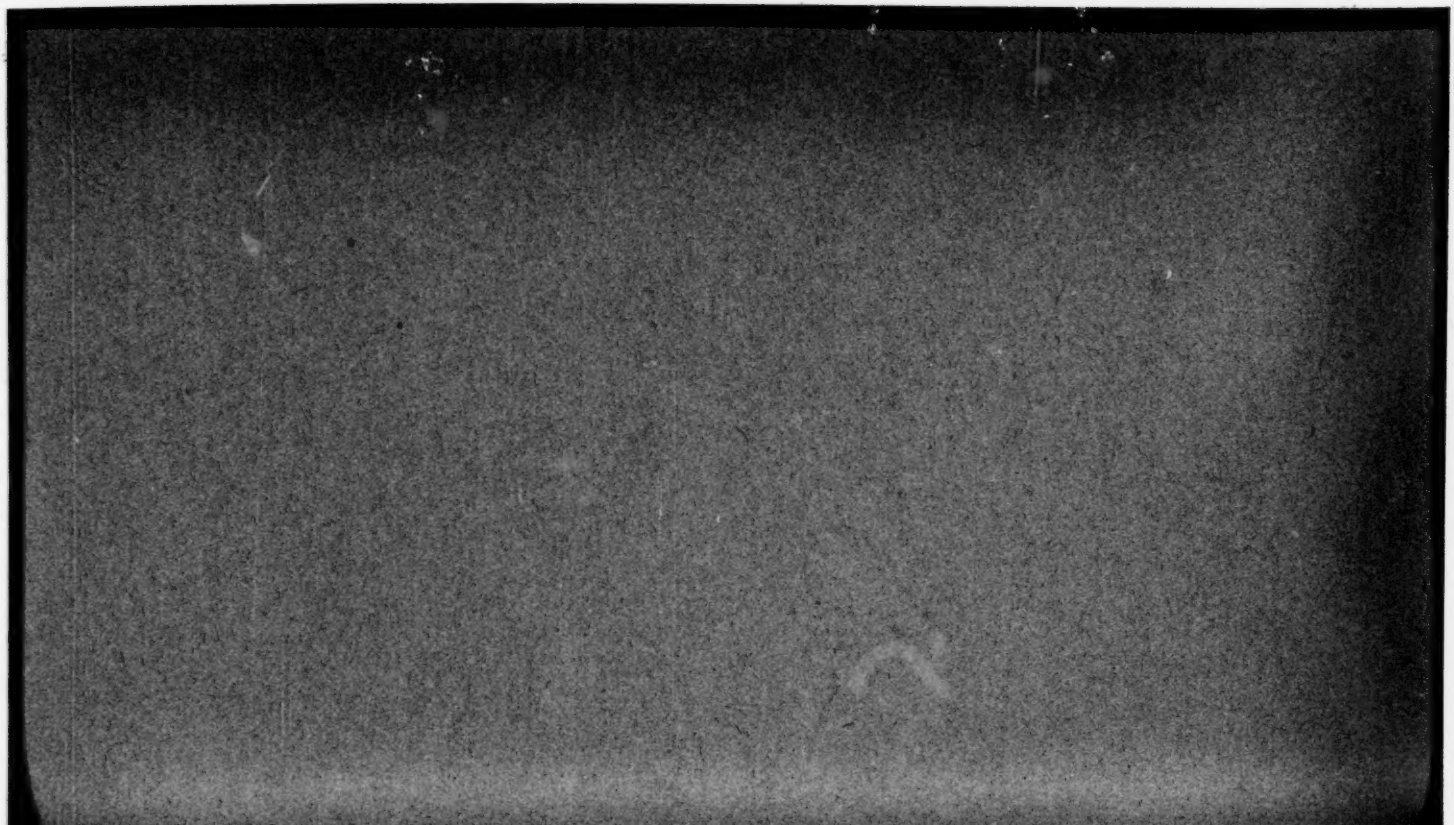

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

COMMISSIONER OF IMMIGRATION OF PORT OF NEW YORK, Petitioner, v. GITTEL GOTTLIEB and ISRAEL GOTTLIEB, Respondents.	No. 221.

BRIEF ON BEHALF OF THE RESPONDENTS.

Statement.

This cause comes to this court upon a writ of *certiorari* directed to the United States Circuit Court of Appeals, for the Second Circuit, to review its determination (Tr. p. 59-60; fols. 64-65), affirming an order of the District Court of the United States, for the Southern District of New York (Tr. p. 58-59; fols. 61-62), sustaining

a writ of habeas corpus sued out by the respondents, releasing and discharging them from the custody of the petitioner, and admitting them into the United States (Tr. fol. 129), after they had been ordered excluded as coming here in violation of the Act of May 19, 1921, in that they were natives of a country whose quota had been filled (Tr. fols. 54-56), and after the affirmance of such determination by the Secretary of Labor (Tr. fol. 57), the respondents being the wife and child (Tr. fols. 7 to 8) of a minister and legally admitted alien resident of the United States, and a declarant (Tr. fols. 9 to 10).

Question and Statutes Involved.

The question presented is whether under the Immigration *Act of May 19, 1921*, Section 2 (d), 42 Stat. c. 8, p. 6, excepting ministers of any religious denomination from the quota provisions of that Act, Section 4, providing that it is in addition to the provisions of the immigration laws and Section 3 of the *Act of February 5, 1917* (39 Stat. 874, 876),† excepting ministers and their legal wives or children under sixteen years of age from the exclusion provisions of that Act, a minister's wife and children, as well as himself are excepted from the quota provisions (see Petitioner's Assignment of Errors "Second", Tr. fols. 132-133; Petitioner's brief, p. 3).

The District Court held (278 Fed. 564, 565):

> "* * * The entire scope of the legislation prevents the narrow interpretation."

* * * * *

† Set out at length, Appendix, Petitioner's brief, PP. 25-38, inclusive.

> "* * * The Act of 1921, interpreted in the light of the controlling Immigration Act of 1917, should be construed so as to include within the exceptions from the quota provisions the wife and children under sixteen years of a minister, as well as the minister himself." (Tr. fols. 118, 119).

The Circuit Court of Appeals affirmed this ruling, and it is the correctness of this ruling which is challenged by the petitioner in this court.

Argument and Law.

I.

The decision of the Circuit Court of Appeals announces a sound principle of construction, and is a reasonable, fair and just interpretation of the immigration acts in question, and clearly typifies the spirit and intention of Congress.

The Act of May 19, 1921, provides that the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year, shall be limited to three per centum of the number of foreign born persons of such nationality resident in the United States as determined by the United States Census of 1910. It is further provided,

in Section 2 (d) of said Act, that the following persons are excepted from its operation:

> "Provided further, That aliens returning from a temporary visit abroad, aliens who are professional actors, artists, lecturers, singers, nurses, *ministers of any religious denomination*, professors for colleges or seminaries, aliens belonging to any recognized learned profession, or aliens employed as domestic servants, may, if otherwise admissible, be admitted notwithstanding the maximum number of aliens of the same nationality admissible in the same month or fiscal year, as the case may be, shall have entered the United States * * *" (Italics ours).

The Act of May 19, 1921, is entitled "An Act to limit the immigration of aliens into the United States," and Section 2 (a) thereof declares the number admissible in any fiscal year. But Section 4 thereof provides:

> "That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws."

Thus, the Act of February 5, 1917, which is the basic immigration law was not repealed, but continued in force and effect, the Act of May 19, 1921, expressly stating, in said Section 4, that it was

> "* * * *not in substitution for* the provisions of the immigration laws." (Italics ours).

Section 3 of the Act of February 5, 1917, enumerates the excluded classes. Said Section also provides that it does not apply to *ministers, nor to their legal wives, nor their children under sixteen years of age, who accompany them, or who subsequently may apply for admission to the United States.*

Solomon Gottlieb, the husband and father, respectively, of the respondents is a minister of a religious denomination, and the respondents were coming to permanently reside here with him (Tr. fols. 11-12). Therefore, it was and is contended that under Section 3 of the Act of February 5, 1917, they had an unrestricted right to enter since they did not come within the excluded classes.

Under the Congressional enactment of May 19, 1921, Section 2 (d), ministers of any religious denomination are excepted from the operation of the provisions of that Act, and this legislation, as shown, did not repeal that part of Section 3 of the Act of February 5, 1917, which we contend accords the right of entry generally to the legal wife or children under sixteen years of age of a minister.

The petitioner's contention is that under the Act of May 19, 1921 (H. R. 4075), the respondents are mandatorily excludable, and that no exception whatever was made so as to exclude from the operation of its provisions, the wives and children of ministers.

In affirming the determination of the District Court, the Circuit Court of Appeals said (285 Fed. 300):

> "* * * We construe the acts of 1917 and 1921 as one statute, the second act being,

as provided therein, an *addition* to and not a substitute for the first act. The effect of the second act is to add to the classes excluded under the original act an additional class to those previously excluded, *but it does not deprive those to whom a right of entry was expressly given in the first act of the right so granted.* Neither the letter nor the spirit of the second act calls for a construction imputing to Congress the intention to create a condition so unreasonable and absurd as to admit a minister while at the same time excluding the members of his family. An interpretation which would exclude the wife and children would be based on a consideration of the second act taken alone. But it cannot be construed alone, but must be interpreted upon a general survey of both acts in all their parts. And when so interpreted we think the right of entry given in the first act to the wife and children of a minister has not been withdrawn because of anything to be found in the second act. If Congress intended to admit the minister, but to exclude his wife and children, it has failed to indicate it by any clear and sufficiently definite specific provision which justifies us in holding that the right expressly granted in the unrepealed act of 1917 has been withdrawn." (Tr. fol. 60, p. 58) (Italics ours).

Petitioner contends that this was an erroneous construction, asserting that the proviso in Section 3 of the Act of February 5, 1917, excepting

ministers, their wives and children under sixteen years of age who accompany them or who subsequently may apply for admission to the United States, is not a general exception applicable to the entire section, but that this proviso relates solely to what has been commonly termed the "Asiatic Barred Zone" (Petitioner's brief, p. 7), and to emphasize the contention it is said that said excepting provision follows immediately those provisions relating to the Asiatic Barred Zone (Petitioner's brief, p. 6). Attention is directed to the point by asserting: "The language is clear. It does not say 'this *section,* however, shall not apply to persons of the following status or occupations.' It says '*the provision next foregoing,* however, shall not apply, etc.' " (Petitioner's brief, p. 7). Special attention is called to Subdivision (6) of the Act of 1921, providing that aliens coming from the so-called Asiatic Barred Zone are not to be counted in reckoning any of the percentage limits provided in said Act (Petitioner's brief, p. 8). The claim is untenable.

If the exception is not to be regarded as general and applicable to the entire section, it results in a right of entry being granted to the wives and children of ministers *coming from the barred zone,* while it denies a similar right of entry *to persons of the same class* coming from *non-barred geographical areas.* The absurdity of such a construction can hardly be doubted.

It is said that the Quota Law of 1921 is an Act to *limit* rather than to *regulate* the immigration of aliens, which is said to be the purpose of the Act of 1917 (Petitioner's brief, p. 8). We confess ourselves unable to appreciate the distinction, if any really exists, for both

Acts are in their true sense restrictive as well as regulatory. The Chinese Exclusion Act † and the Contract Labor Law ‡ were as much *limitations* on the extent of the permissible immigration to the United States, as are the Acts of 1917 and 1921. The question is not one of distinction between regulation and limitation, but whether the law involved, in the light of its object, fairly and sensibly construed, excludes the family of a minister, where he is himself expressly exempted from the barrier to admission.

The argument is advanced that if the construction of the Circuit Court of Appeals is to be upheld, it will extend to absurd lengths, and *United States ex rel Markarian* vs. *Tod*, 290 Fed. 198, is cited, where it was held by the same court (following the reasoning in the instant case),* that an alien returning from abroad where he had gone for the purpose of being married, might bring back with him his wife, notwithstanding the fact that the quota of her nationals had been filled, and that this would require the admission of aliens who had entered before the passage of the Quota Law, as well as of all those who enter under it (Petitioner's brief, p. 22). We do not share the view adopted by the Circuit Court of Appeals in the *Markarian* case, to justify the alien's right to enter, and doubt the correctness of the application of the ruling in the case at bar to that one, because the Act does not exempt the wife of an alien who goes abroad to marry, and it might very well furnish a medium for circumvention of quota allotment. The case at bar is distinguishable not only in point of facts, but

† Supplement, page 30.
‡ Supplement, page 33.
* *Ante* pages 5-6.

by virtue of the express exemption, in Section 3 of the Act of 1917, applicable to ministers and their wives and children, and the further express exemption contained in the Act of 1921, applicable to ministers.

Petitioner stresses the literal language of the statute, *i. e.*, the "*provision next foregoing*", as indicative of the intention of Congress not to make the exception a general one and applicable to the entire section, citing *U. S.* vs. *Bernays*, 158 Fed. 792, where it was held that a proviso should be construed with reference to the subject matter of the sentence of which it forms a part (Petitioner's brief, p. 7). This is true as a bare statement of a rule of statutory construction but it must be manifest that it is not applicable to or decisive of every given case. The point made is not new, as may be seen from the case of *Church of the Holy Trinity* vs. *United States*, 143 U. S. 457, which involved the construction of the Act of February 26, 1885, c. 164, 23 Stat. 332, which in terms prohibited the importation and migration of aliens under contract or agreement to perform labor in the United States. *The language of the Act was clear and unequivocal. It prohibited the importation of aliens under contract for services "*of any kind*". It contained, at the end of the fifth section, a specific proviso that the provisions of that Act should not apply to professional actors, artists, lecturers or singers, nor to persons employed strictly as personal or domestic servants, * * just as Section

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* See Supplement, p. 33, where the relevant portions of the Act appear *verbatim*.

** *Vide infra*, p. 33.

3 of the Act of February 5, 1917, contains a proviso excepting Government officers, ministers or religious teachers, missionaries, lawyers, physicians, chemists, civil engineers, teachers, students, authors, merchants, and travellers for curiosity or pleasure, and their legal wives and children under sixteen years of age who accompany them, or who subsequently apply for admission to the United States. No exception whatever was made in the Act of February 26, 1885, with regard to the employment of a clergyman. The Act expressly declared the persons to whom it was inapplicable. Yet this court held the Act inapplicable to a clergyman, declining to follow the literal wording of the Statute, and declaring that the Act should be construed according to its spirit, further holding that it was clear that it was aimed at physical labor, and that giving it a fair construction, it could not be said to exclude one whose work involved mental rather than physical labor.

This court, speaking through Judge Brewer said (P. 459):

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation,

> or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act.

That was a much stronger case than this, for the Act of February 26, 1885, nowhere in its provisions mentioned a clergyman, while the Act of February 5, 1917, expressly mentions ministers and their wives and children.

In *Chung Toy Ho*, 42 Fed. 398,

Section 6 of the Act of July 5, 1884, c. 220, 23 Stat. 115 (Chinese Exclusion Act) was construed in connection with the Treaty with China of November 17, 1880, 22 Stat. 826. That Act* required "every Chinese person", other than a laborer, coming to this country, to be identified by a certificate from the Chinese Government, and provided that such certificate should be the sole evidence permissible on the part of the person producing the same, to establish a right of entry into the United States.

Article II of the Treaty with China, of November 17, 1880 **, dispensed with the necessity of such certificate in the case of a Chinese merchant, and provided that he could come and go of his own free will and accord, and placed him on a par with citizens and subjects of the most favored nation. The husband and father of the petitioners in that case was a Chinese merchant dwelling in the United States, and

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* Supplement, p. 30 where the relevant part appears.

** Supplement, p. 30 *verbatim*.

they came here to join him and reside with him. They did not have the certificate required by Section 6 of the Act of July 5, 1884, and were ordered excluded on that ground. The question involved was whether they could enter without it, *by virtue of the right of entry of the husband and father*, though neither the Act nor the Treaty mentioned or exempted the wife or child of such Chinese merchant. The Court held they were admissible, saying (P. 399):

> "The manifest purpose of this legislation is to exclude Chinese laborers, from coming or returning to the United States. The other classes—'teacher, student, and merchant'—are not required to have certificates before they can be admitted into the country, because their admission is intended to be restrained or limited, but to prevent laborers from being admitted under the guise or in the character of such classes.
>
> There is no limitation on the right of these classes to come within and dwell in the United States. The statute only requires that such a person shall furnish the prescribed evidence that he belongs to one of these favored classes, when he may come and go at pleasure.
>
> The admission of the petitioners is not within the mischief that the exclusion act was intended to remedy. They are both females, the child being about eight years of age. It is common knowledge that Chinese women are not laborers. The station in life of the petitioners, being the wife

and child of a merchant, also shows they do not belong to the laboring class.

The petitioners are not within the purview of the exclusion act of 1888, which is confined to laborers. Do they come within that of section 6 of the act of 1884, which requires 'every Chinese person' other than a laborer to procure from his own government the certificate required by said section before he can be admitted into the United States?

Confessedly, the petitioners are 'Chinese persons', and are therefore within the letter of the statute. But in my judgment they are not the 'persons' contemplated by congress in the passage of the act.

Chinese women are not teachers, students, or merchants; and therefore they cannot, as such, obtain the certificate necessary to show they belong to the favored class. But, *as the wives and children of 'teachers, students, and merchants', they do in fact belong to such class;* and the proof of such relation with a person of this class, entitled to admission, is plenary evidence of such fact." (Italics ours).

The Court then said that it ought not to be lightly or without cogent reason concluded that Congress in the passage of the Act of 1884 really intended to limit or restrain its operation in this respect, remarking (p. 399):

"The treaty (article 2) declares that a Chinese merchant may bring his 'body and household servants' with him into the country * * *.

It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, *ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children* * * * (Italics ours).

There is nothing in the act of 1884 that indicates an intention on the part of congress to limit or restrain the privileges conceded to Chinese merchants by this article of the treaty. It only adds a rule or measure of evidence by which the fact of being such merchants may be conclusively established.

* * * * *

My conclusion is that under the treaty and statute, taken together, a Chinese merchant who is entitled to come into and dwell in the United States *is thereby entitled to bring with him, and have with him, his wife and children.* The company of the one, and the care and custody of the other, are his by natural right; and he ought not to be deprived of either, unless the intention of congress to do so is clear and unmistakeable." (Italics ours).

To like effect is *Re Tung Yeong,* 19 Fed. 184.

In *United States* vs. *Mrs. Gue Lim,* 176 U. S. 459, this Court also construed the Chinese Exclusion Act of July 5, 1884, c. 220, 23 Stat. 115,(a) in connection with the Treaty with China of November 17, 1880, 22 Stat. 826,(b) and the Convention with China of March 17, 1894, 28 Stat. 1211.(c) The aliens in that case were the wife and child of a Chinese merchant, and they were also ordered excluded because of their failure to produce the required certificate. There was nothing in the Act, Treaty or Convention which mentioned or exempted such wife or child, yet this court held that by fair construction they could not be excluded, and that their right to come in was theirs *by reason of their relationship to the father.*

This court, speaking through Judge Peckham, said (P. 461):

> "The question here arising in regard to the correctness of the decision of the District Court in the case of the married woman depends for its solution upon the construction to be given to the sixth section of the act of Congress of 1884. * * *"

(On Page 462):

> "That section must be construed in connection with the treaty concluded between this country and China in November, 1880, 22 Stat. 826.

(a) Supplement, page 30.

(b) Ibid.

(c) Supplement, page 32, relevant part.

It is contended, on the part of counsel for the Government that by the subsequent treaty of March, 1894, 28 Stat. 1210, the two Governments have agreed that the requirements of a certificate as provided for in the sixth section of the act of Congress shall apply to all permitted Chinese subjects who must, without exception, produce such certificates."

(On Page 463):

"We do not think the treaty of 1894 alters the result flowing from the treaty of 1880 and the act of 1884. *The question is, whether* under the act of 1884, construed in connection with the treaty of 1880, *the wife of a Chinese merchant, domiciled in this country, may enter the United States without a certificate, because she is the wife of such merchant.* (Italics ours).

Although the third article of the treaty of 1894 does speak of certificates for Chinese subjects therein described, who already enjoy the right to enter the country, the question recurs whether the certificate of the husband who himself enjoys the right is not enough for the wife, the fact being proved or admitted that she is such wife. Possibly the result of the treaty of 1894 may be held to be, instead of simply prohibiting the entrance of Chinese laborers, to restrict the right of entry to those classes who are specially named in the third article of the treaty. But the question would still remain whether the wives of the members

of the classes privileged to enter, were not entitled themselves to enter *by reason of the right of the husband* and without the certificate mentioned in the act of 1884." (Italics ours).

(On Page 464):

"This court has already sustained the power of Congress to provide for excluding or expelling Chinese, even in contravention of a treaty; also the power to entrust the final determination of the facts upon which the individual is to be expelled, to an executive officer. *Fong Yoe Ting* vs. *U. S.* 149 U. S. 698; *Wong Wing* vs. *U. S.* 163 U. S. 228 * * *. The question is, What did Congress mean by the act of 1884?

* * * * *

It is impossible to entertain the belief that the Congress of the United States, immediately after the conclusion of a treaty between this country and the Chinese Empire, would, while assuming to carry out its provisions, pass an act which violated or unreasonably obstructed the obligation of any provision of the treaty.

* * * * *

There is nothing in the act of 1884, which, in terms, enumerates and provides for the admission of particular classes of persons. It speaks in the sixth section of those who may be entitled under the treaty or under the act to come within the United States, but the act does not assume to enlarge the

number or character of the classes specially named in the treaty as entitled to admission. It is plain that in this case the woman could not obtain the certificate as a member of any of those specially enumerated classes. She is neither an official, a teacher, a student, a merchant nor a traveller for curiosity or pleasure. *She is simply the wife of a merchant, who is himself a member of one of the classes mentioned in the treaty as entitled to admission. And yet it is not possible to presume that the treaty, in omitting to name the wives of those who by the second article were entitled to admission, meant that they should be excluded. If not, then they would be entitled to admission because they were such wives, although not in terms mentioned in the treaty.* (Italics ours).

Does the sixth section mean that in such case the wife must obtain the certificate therein provided for? We think not.

* * * * *

Various other provisions in the section render it plain to our minds that it was never intended to extend to the wives of persons who were themselves entitled to entry." (Italics ours).

(On Page 467):

"While the literal construction of the section would require a certificate, as therein stated, from every Chinese person, other than a laborer, who should come into the

country, yet such a construction leads to what we think an absurd result, for it requires a certificate for a wife of a merchant, among others, in regard to whom it would be impossible to give the particulars which the statute requires shall be stated in such certificate.

'Nothing is better settled', says the present Chief Justice, in *Lau Ow Bew* vs. *U. S.*, 144 U. S. 47, 59, 'than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion'.

The purpose of the sixth section, requiring the certificate, was not to prevent the persons named in the second article of the treaty from coming into the country, but to prevent Chinese laborers from entering under the guise of being one of the classes permitted by the treaty. It is the coming of Chinese laborers that the act is aimed against."

(On Page 468):

"To hold that a certificate is required in this case is to decide that the woman cannot come into the country at all, for it is not possible for her to comply with the act, because she cannot in any event procure the certificate even by returning to China. *She must come in as the wife of her domiciled husband or not at all. The act was never meant to accomplish the result of per-*

manently excluding the wife under the circumstances of this case, and we think that, properly and reasonably construed, it does not do so. (Italics ours).

* * * * *

They come in by reason of their relationship to the father * * *. When the fact is established, to the satisfaction of the authorities that the person claiming to enter, either as the wife or minor child, is in fact the wife or minor child of one of the members of the class mentioned in the treaty as entitled to enter, then that person is entitled to admission. * * *" (Italics ours).

Applying the rule of construction in the cases referred to, coupled with the exemption of ministers and their wives and children in Section 3 of the Act of February 5, 1917, and the further exception as to ministers in the Act of May 19, 1921, it seems clear that the challenge to the correctness of the lower court's construction is entirely lacking in logic and merit.

II.

The doctrine of sensible construction and implied exception.

There is yet another, and what we maintain conclusive and decisive answer to the contention of the petitioner, that from the mere fact that

the act does not in so many words include the family of a minister, that congress intended to exclude them while admitting him, and that is this: That for the purpose of avoiding an unjust, oppressive, or absurd consequence or conclusion, it will be presumed that the legislature intended exceptions to its language, where without them such a result would obtain.

This was expressly held in

Church of the Holy Trinity, supra,

where Mr. Justice Brewer, quoting from *United States* vs. *Kirby,* 7 Wall. 482, 486, said (P. 461):

> " 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature *intended exceptions* to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.' " (Italics ours).

It has been said that—

> "These immigration statutes are to be *construed as a whole, and not by singling out particular words or sections,* and interpreting them according to their strict letter. A thing may be within the letter of the statute, and yet not within the statute, be-

cause not within its spirit, nor within the intention of its makers." (Italics ours.)

From *United States ex rel Andersen* vs. *Burke*, 99 Fed., 895, 898.

Is it within the spirit of the statute, or the intention of its makers, that a minister should be permitted the right of entry, regardless of the quota allotment being exhausted, and yet not give a similar right of entry to the members of his family? It would seem most unreasonable to suppose that such was the legislative intent —to admit a minister and exclude his family.

In *United States* vs. *Kirby* and in *United Staes ex rel Andersen* vs. *Burke, supra*, and *Lau Ow Bew* vs. *United States, post*, it was held that a *sensible* construction should be given to immigration statutes; and if a sensible construction be given to the act of May 19, 1921, it is entirely clear that it is not within the spirit of the statute to admit a minister and exclude the members of his family.

In *Lau Ow Bew* vs. *United States*, 144 U. S., 47, 59; 12 Sup. Ct., 520; 36 L. ed., 44, a deportation case, Chief Justice Fuller said (page 59):

"Nothing is better settled than that statutes should receive a *sensible* construction, such as will effectuate the legislative intention, and, if possible, *so as to avoid an unjust or an absurd conclusion.*" (Italics ours).

And *U. S.* v. *Mrs. Gue Lim, supra.*

In *United States* vs. *Barnes*, 222 U. S., 513, 519, Mr. Justice VAN DEVANTER, speaking of the rule of implied exception said (page 519):

> "The maxim invoked expresses a rule of construction, not of substantive law, and serves only as an aid in discerning the legislative intent when that is not otherwise manifest. In such instances it is of deciding importance; in others, not. In the instance now before us too much is claimed for it.

On page 520:

> * * * It is the settled rule of decision in this court that where there is subsequent legislation upon such a subject it carries with it an implication that the general rules are not superseded, but are to be applied in its enforcement, save as the contrary clearly appears.
>
> * * * " 'The more natural, if not the necessary inference in all such cases is, that the legislature intends the new laws to be auxiliary to, and in aid of the purposes of the old law * * * There certainly, under such circumstances, ought to be a manifest and total repugnancy in the provisions, to lead to the conclusion that the latter laws abrogated, and were designed to abrogate the former.' "

In *City of Lexington* vs. *Commercial Bank*, 130 Mo. App., 687, 692, the Court said:

> "The maxim that the expression of one thing is the exclusion of others not ex-

pressed is not to be accepted as a hard and fast canon of statutory construction, but as a guide to point to the legislative intent which, when ascertained, should dominate the construction to be placed on the enactment (*McFarland* v. *Railway*, 94 Mo., App., 1, c. 342). It has been said, if there is some special reason for mentioning one and none for mentioning the other, the absence of any mention of the latter will not operate as an exclusion and that the maxim does not apply to a statute in which mention is made by way of example or made in affirmance of existing law or to remove doubts, or when the context shows a different intention. To ascertain the intention of a statute, *it should be read in view of all the surrounding facts and circumstances, under which it was enacted*, and, it may be added 'common sense and good faith are the leading and principal characteristics of all interpretation.'" (Italics ours).

And *Re Chung Toy Ho, supra.*

Bearing in mind the rule of sensible construction and intended exception, and that a construction should be given as not to lead to injustice, oppression or an absurd consequence, the conclusion is irresistible that it was not intended that the family of a minister should be excluded, because of the exhaustion of the quota allotment, where the minister himself was excepted therefrom.

There is not the slightest expression in the restrictive Act of May 19, 1921, unless it is

read into it by sheer force, which indicates that it was the intention of Congress to admit a minister and exclude the members of his family. Neither the letter nor the spirit of the Act calls for a construction imputing to Congress the intention to create a condition so unreasonable. Nothing in the scope of the statute seems to contemplate, or can be rationally held to contemplate the interpretation contended for, namely, the exclusion of "parts of a family".*

Under the Act of February 5, 1917, these aliens were admissible, and since the Act of May 19, 1921, is in *addition to* and *not in substitution for* the immigration laws, Congress obviously cannot be said to have intended that law as a substitute, so as to include therein those admissible under the basic (1917) Act.

In other words, Congress, *in substance,* said this:

> "*In addition* to those already excludable under the 1917 Act, we exclude those we now specifically mention."

That, we submit, is about all that can be said the 1921 Act was intended to accomplish. That is to say, it added an additional class to that *already excludable* under the basic Act, *but did not touch or affect those admissible under it.*

Here we see a definite purpose to exclude the immigration and bringing in of persons intending to migrate to the United States if they belong to the excluded classes.

Ministers of religious denominations are expressly excepted, and although the members of their immediate family, as wife and children,

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* Jenks & Lauck, *Ad hoc,* The Immigration Problem (1912), PP. 335-336.

are not specifically mentioned, nevertheless, it must be apparent that this exception was intended to apply as well to them, for, as stated, to hold the converse would be, in effect, to rule that while he might come, his family might not.

This cannot be the just interpretation of the Act upon the subject of this restrictive immigration, and such interpretation is not justified by the terms of both Acts, upon a general survey of them in all their parts, or by the reports of the various committees. The traditional policy of the United States being to admit all aliens, except those specifically excluded, it is respectfully submitted, that with the rule of sensible construction and intended exception in mind, it cannot be held that it was the intention of Congress by this Act, not to admit the respondents, as the members of the family of a minister, where he was expressly excepted from the operation of its provisions.

III.

The Act of May 19, 1921.

It has been said that the *object* and *purpose* of a law is the ever insistent consideration in its interpretation (*United States* vs. *Antikamnia Co.* 231 U. S. 654, 657).

A consideration of the reasons leading to the passage of this Act clearly discloses its *object* and *purpose*, and demonstrates that the wife and children of a minister were not intended to be included in the quota allotment provisions.

A reference to the report of the Senate Committee on Immigration to accompany H. R. 4075

(*Report No. 17, April 28, 1921, 67th Congress, First Session*) made by Mr. Dillingham, the purported author of the law, clearly indicates that it was not the intention by this legislation, to make the Act of May 19, 1921, general in its operation. At page 7, thereof, it is stated:

> "It was the new immigration coming in unprecedented numbers which created our pre-war problem and, as already indicated, it is the impending return of this movement to its pre-war status which in the opinion of the Committee *constitutes the present emergency.* Unlike the older immigration, which distributed itself to every part of the country, entered every branch of activity, and was, as a rule, quickly and thoroughly assimilated, *the new immigration has consisted largely of single men,* it has gone directly to the cities and to the manufacturing centres, and has remained there. It has moved in racial groups and to a large extent has maintained them, and compared with the older immigration it, as a rule, shows a slighter tendency to become American citizens and the number who have gone to the land have been negligible.
>
> The Committee are of the opinion that in the present emergency a restriction should be applied *to the type last described* and are convinced that such restriction should be accomplished through some measure that will insure definite effectiveness." (Italics ours).

Thus, it is established, that the "type" of immigrant which the emergency measure was

aimed at and directed, was not the wife and children of a minister. That "type", was, manifestly, not intended.

As further illustrating that it was not intended to make general in its operation, the restrictive Act of May 19, 1921, the following from Page 6 of the same Report, emphasizes the contention:

> "For reasons stated and for others which will further appear in this report the Committee are of the opinion that *no emergency exists at the present time which warrants a general prohibition* of European immigration into the United States, although it has been advocated by some.
>
> *A prohibition measure of this character has never been resorted to by the United States and should only be adopted under the most extraordinary circumstances.*"
> (Italics ours).

Here we have in most concrete form, the definite indication that it was not the intention of Congress by this restrictive legislation to make it operate as a *general* prohibition, the Report expressly stating that no emergency exists which warrants it, and further declaring that it had never been resorted to before.

That legislation was aimed at a particular "type" of aliens regarded as undesirable, in respect to which a minister was not included, and it can hardly be said that Congress intended to include his family in the undesirable "type", where he, himself, was exempted and regarded as desirable.

It was never suggested in the Committee discussions or Congressional debates, that the

family of a minister was aimed at and should be excluded, or that their right of entry under the basic Act of February 5, 1917, should in any wise be affected by the Act of May 19, 1921. If Congress intended that such should be the case, it would have plainly so expressed it, and failure to find any such expression must be regarded as a negative intention on its part. This view is confirmed by the above quoted portion of the Senate Committee's Report, that the legislation was not intended as a general prohibition, nor that conditions warranted it and such has been the ruling under the weight of authority (*Church of the Holy Trinity* v. *U. S., supra; Chung Toy Ho, supra; U. S.* v. *Mrs. Gue Lim, supra*).

Conclusion.

For the reasons hereinbefore urged, it is respectfully submitted that the determination of the Circuit Court of Appeals affirming the order of the District Court, releasing and discharging the respondents and admitting them into the United States is correct, and that its determination, should, therefore, be affirmed.

January, 1924.

Respectfully submitted,

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BARNETT E. KOPELMAN,
With him on the brief.

SUPPLEMENT.

Treaty with China, November 17, 1880.

(Treaty between the United States and China, concerning immigration. Concluded November 17, 1880; ratification advised by the Senate May 5, 1881; ratified by the President May 9, 1881; ratifications exchanged July 19, 1881; proclaimed October 5, 1881; 22 Stat. 826).

ARTICLE II.

CHINESE SUBJECTS IN THE UNITED STATES.

Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States, shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation.

Chinese Exclusion Act, July 5, 1884.

(An act to amend an act entitled "An Act to execute certain treaty stipulations relating to Chinese approved May sixth eighten hundred and eighty two; Approved July 5, 1884; 23 Stat. 116).

CHINESE, OTHER THAN LABORERS, TO BE IDENTIFIED BY CERTIFICATE FROM CHINESE GOVERNMENT.

Sec. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who

may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign Government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States. If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid * * *. Such certificate vised as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced * * * and shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States * * *.

Convention with China, March 17, 1894.

(Convention between the United States of America and the Empire of China. Emigration between the two countries. Signed at Washington, March 17, 1894; ratification advised by the Senate August 13, 1894; ratified by the President August 22, 1894; ratified by the Emperor of China in due form; ratifications exchanged at Washington December 7, 1894; proclaimed December 8, 1894; 28 Stat. 1211).

ARTICLE III.

CLASSES PERMITTED TO ENTER.

The provisions of this Convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travellers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government or the Government where they last resided vised by the diplomatic or consular representative of the United States in the country or port whence they depart.

Contract Labor Law, February 26, 1885.

(An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia; approved, February 26, 1885; c. 164; 23 Stat. 332).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

* * * * *

Provided, That skilled labor for that purpose cannot be otherwise obtained: nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants * * *.